United States Department of Labor Employees' Compensation Appeals Board

| N.S., Appellant |) |
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| and |) Docket No. 18-0759) Issued: March 11, 2019 |
| U.S. POSTAL SERVICE, POST OFFICE, Perry, GA, Employer |) |
| Appearances: Appellant, pro se Office of Solicitor, for the Director |) Case Submitted on the Record |

ORDER REMANDING CASE

Before: CHRISTOPHER J. GODFREY, Chief Judge TRICIA H. FITZGERAL D. Deputy Chief Judge

PATRICIA H. FITZGERALD, Deputy Chief Judge ALEC J. KOROMILAS, Alternate Judge

On February 26, 2018 appellant filed a timely appeal from a September 18, 2017 merit decision and a January 5, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 18-0759.

On August 10, 2017 appellant, then a 51-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on July 20, 2017 she sustained an injury at work due to tripping on a grass runner and falling to the ground while delivering a parcel. She asserted that she sustained injury to her legs, knees, back, and neck. Appellant stopped work on August 9, 2017.

By decision dated September 18, 2017, OWCP denied appellant's claim for a July 20, 2017 employment injury. It accepted the occurrence of the July 20, 2017 employment incident in the form of tripping and falling to the ground, but further found that appellant failed to submit medical evidence sufficient to establish a specific condition causally related to the accepted July 20, 2017 employment incident. OWCP listed documents received from appellant that it had reviewed in making its findings, including August 2 and 9, 2017 work status reports, a July 30, 2017 computerized tomography scan of the lumbar spine, and a July 30, 2017 report of Dr. Chuc V. Pham, an attending family practitioner.

The Board notes, however, that appellant submitted a number of documents prior to the issuance of OWCP's September 18, 2017 decision which were not reviewed by OWCP. These

documents include a July 28, 2017 report of Dr. Sabry Gabriel, an attending family practitioner, August 2, 9, and 21, 2017 reports of Dr. Wayne Kelley, an attending Board-certified orthopedic surgeon, two August 21, 2017 reports of Dr. Winston Jeshuran, an attending Board-certified orthopedic surgeon, and an August 15, 2017 magnetic resonance imaging scan of the lumbar spine.

The Federal Employees' Compensation Act provides that OWCP shall determine and make findings of fact in making an award for or against payment of compensation after considering the claim presented by the employee and after completing such investigation as OWCP considers necessary with respect to the claim.¹ Since the Board's jurisdiction of a case is limited to reviewing that evidence which is before OWCP at the time of its final decision,² it is necessary that OWCP review all evidence submitted by a claimant and received by OWCP prior to issuance of its final decision. As the Board's decisions are final as to the subject matter appealed,³ it is crucial that all evidence relevant to that subject matter which was properly submitted to OWCP prior to the time of issuance of its final decision be addressed by OWCP.⁴

Herein, OWCP did not review evidence received prior to the issuance of its September 18, 2017 decision, *i.e.*, the documents described above. The Board, therefore, must set aside OWCP's September 18, 2017 decision and remand the case so that OWCP may fully consider the evidence that was properly submitted by appellant prior to the issuance of this decision. Following such further consideration, OWCP shall issue a *de novo* decision.

¹ 5 U.S.C. § 8124(a)(2).

² 20 C.F.R. § 501.2(c).

³ *Id.* at § 501.6(d).

⁴ See E.P., Docket No. 14-0278 (issued February 26, 2014); see also William A. Couch, 41 ECAB 548, 553 (1990).

IT IS HEREBY ORDERED THAT the September 18, 2017 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded to OWCP for action consistent with this order.⁵

Issued: March 11, 2019 Washington, DC

> Christopher J. Godfrey, Chief Judge Employees' Compensation Appeals Board

> Patricia H. Fitzgerald, Deputy Chief Judge Employees' Compensation Appeals Board

> Alec J. Koromilas, Alternate Judge Employees' Compensation Appeals Board

⁵ The record contains a January 5, 2018 decision in which OWCP denied appellant's request for review of the written record by a representative of OWCP's Branch of Hearings and Review. Given the Board's disposition of the merit issue of the present case, it is premature to consider this nonmerit issue.